STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

IN RE:	)	
	)	
MIDAMERICAN ENERGY COMPANY	)	DOCKET NO. 01-0696
	)	
Proposed general increase in gas rates	)	

BRIEF ON EXCEPTIONS
OF
MIDAMERICAN ENERGY COMPANY

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COMES NOW, MidAmerican Energy Company (MidAmerican) and submits its Brief on Exceptions to the Administrative Law Judge's Proposed Order (Proposed Order) issued on July 19, 2002.

MidAmerican takes exception to the following areas of the Proposed Order: IV. Test Year and Proposed Revenue Increase; V.B.2. and VI.C.2. Incentive Compensation; VI.C.3. Cordova Energy Center; VII.D. Flotation Costs; VIII.C. Allocation of Marketing Costs—Margin versus Throughput; IX.A.1. Rate 60 Customer Charge; IX.B.2. Rate 70 Distribution Energy Charge; IX.C. Rate 85 Customer Charge and Distribution Energy Charge; IX.D. Rate 87; IX.E.2. Rider 9—Firm Stand-by Service Adder; IX.F.2. Rider 8—Non-Critical-Day Balancing of Customer-owned Volumes.

I. GENERAL

MidAmerican believes that in the above referenced areas further review of the evidence and reasoning supporting the positions taken by MidAmerican is warranted.

MidAmerican generally supports and concurs in the conclusions in the Proposed Order to which it has not taken exception herein but reserves the right to reply to exceptions taken by other parties.

II. TEST YEAR AND PROPOSED REVENUE INCREASE (IV. OF PROPOSED ORDER)

MidAmerican understands that Staff will be filing an exception explaining that the proposed decisions on the individual issues in the order would produce a revenue increase of $2.233 million. MidAmerican concurs with Staff that based on the proposed decisions the revenue increase would be $2.233 million. However, MidAmerican continues support for the revenue level evidenced in its draft order filed on July 1, 2002, and supported in the record wherein the increase to MidAmerican's gas operating revenues would be $2.593 million.

III. INCENTIVE COMPENSATION (V.B.1. AND VI.C.2 OF PROPOSED ORDER)

MidAmerican seeks to include salary expenses of $353,000 and rate base of $18,000 associated with incentive compensation payments in its revenue requirement. Staff proposed to disallow these salary costs completely. The Proposed Order adopts Staff's position. The Proposed Order inappropriately ignores evidence that MidAmerican's total compensation costs (consisting of base pay and incentive compensation) are at reasonable levels, are recurring in nature and are focused on individual, and not corporate, goals.

Following are the specific arguments made by the Administrative Law Judge to support the proposed Conclusion and MidAmerican's exceptions:

- MidAmerican did not include factual detail on incentive compensation individual goals and tangible evidence of savings or ratepayer benefits arising from implementation of the incentive compensation program. MidAmerican was directed by the Commission in its Order in MidAmerican's DST Docket No. 01-0444 to provide this evidence if it wanted the Commission to "revisit" this issue. [Proposed Order at 9].

RESPONSE: MidAmerican has presented factual evidence of individual goals. MidAmerican Exhibit 13.2 consists of over 60 goals that were applicable to individual employees during the test period. To provide tangible evidence of benefits from incentive compensation, MidAmerican has presented the sworn testimony of its Vice President Human Resources. Ms. Sammon asserts tangible benefits to the company and its ratepayers from productivity gains and more efficient operations. (MidAmerican Exhibit 13.0 at 12) and from the emphasis in the individual goals on customer service safety, cost reduction and creativity (MidAmerican Exhibit 17.0 at 2). Ms. Sammon also testifies as a human resources professional who can judge the superior impact on the efficiency of Company operations when employees are rewarded for individual performance by an incentive compensation program as compared to semi-automatic merit pay. (MidAmerican Exhibit 17.0 at 4). There is no question that sworn testimony constitutes legally competent evidence in this proceeding and should have been relied upon by the Administrative Law Judge in this proceeding. See *Commonwealth Edison v. Illinois Commerce Commission*, 322 Ill. Appl 3d 846; 751 N.E. 2d 196 (2001) at 200-202.

- Staff witness Hathhorn was not able to determine from the savings evidence presented which savings affected Illinois (Proposed Order at 9).

RESPONSE: Ms. Hathhorn reviewed aggregated savings information that was provided to support incentive compensation payments to persons with responsibilities for MidAmerican's entire operations. Certain items presented were clearly not applicable to Illinois, as she was able to discern. However, this savings information was not intended to support a savings pro forma adjustment, but was intended to support in a generalized sense the fact that significant cost savings (in addition to tangible benefits) have resulted from MidAmerican's incentive compensation program.

- While recognizing the need of MidAmerican to pay market wages, the Proposed Order states that MidAmerican did not meet its burden to prove that, without incentive compensation, its wages would be at lower than market levels [Proposed Order at 10].

RESPONSE: This conclusion totally ignores the sworn testimony of Ms. Sammon in this proceeding. Ms. Sammon has testified:

- An employee earning the midpoint of their pay grade <u>plus the target incentive plan</u> payment would earn total cash compensation that was at the labor market average." (Emphasis supplied). (MidAmerican Exhibit 13.0 at 5).

- [Incentive compensation] [t]argets were set so that base salary plus target incentive would allow employees an opportunity to earn labor market average total cash compensation. (MidAmerican Exhibit 13.0 at 6).

- Since base salary plus incentives are set together to meet competitive labor market rates, eliminating one of these components would adversely impact the Company's ability to attract and retain employees. Absent the incentive component of total cash compensation, base salary would have to be increased to be competitive. Therefore, Company compensation expense would not be expected to decrease if the Company eliminated incentive compensation…..(MidAmerican Exhibit 13.0 at 13).

- In addition, Ms. Sammon testifies that Mr. Carl Jacobs of AON Consulting has conducted a study of MidAmerican's compensation that compares MidAmerican's total cash compensation to labor market averages. (MidAmerican Exhibit 13.0 at 7).

MidAmerican has clearly met its burden to prove its total compensation, consisting of base pay plus incentive compensation is at labor market averages. The Proposed Order would reflect in MidAmerican's revenue requirement only base pay amounts, which are woefully deficient in recovering the labor market average costs that MidAmerican must pay to attract and retain its workforce.

- Although MidAmerican asserts that it pays market wages, Ms. Hathhorn was not able to verify the calculation of market wages for certain positions and what base pay was in relation to these wages (Proposed Order at 10).

RESPONSE: The record reflects unrebutted evidence of the process that MidAmerican employs to evaluate its jobs. At the hearing, Ms. Sammon explained the process that is used to evaluate jobs to determine whether they are at labor market average rates for pay. Her description of this process was not questioned by Staff. (Tr. at 37, 44-45).

Furthermore, the record suggests that Ms. Hathhorn may not have thoroughly reviewed the data provided by MidAmerican regarding determination of labor market average wages because she did not think it was particularly relevant. In her rebuttal testimony, she stated that whether or not the wages were at labor market average levels was of no consequence, because MidAmerican's incentive compensation program was flawed. (ICC Staff Exh. 7.0 at 5-6). At the hearing, while Ms. Hathhorn testified to a confusing determination process and a lot of data to review, she also acknowledged that she did not go further in her analysis (perhaps because it was of no consequence) by asking any questions when she was confused by the volume of the data. (Tr.64). Ms. Hathhorn's attempts to verify labor market average data to an unknown extent should not be relied upon when there is unchallenged evidence of the process that is used by MidAmerican to evaluate jobs in the record.

- Incentive compensation costs should not be recovered, because they may not recur. Even if for some reason, incentive compensation payments are not made, such as if the Company's financial goals are not met or individual goals are not met, the Company still recovers the cost through rates (Proposed Order at 10).

RESPONSE: This conclusion is inconsistent with the Commission's decision in Docket No. 01-0444, where the Commission dismissed Staff's concern that a disclaimer clause could result in discontinuance of incentive compensation expense and payment of less than the amounts recovered in rates. Also, it is significant to note that this conclusion could be drawn about <u>any</u> component of the revenue requirement. A utility could reduce any expense the day after rates were approved by the Commission, and the company would continue to recover the expense until its next rate case. Indeed, there is more evidence of recurrence of incentive compensation expense in this case than there is of any other expense. First, MidAmerican's Exhibit 13.2 shows not only five years of incentive compensation payments, but also <u>increasing</u> amounts of pay in each of the succeeding years. Comparable evidence of recurrence has not been required for any other expense in this case. Second, the recurrence concern is really irrelevant; because it is unchallenged that MidAmerican will have to pay its employees labor market average wages, no matter how they may be structured.

This Proposed Conclusion also expresses a concern about recurrence in that there might not be a payout if individual goals are not met. The history of increasing Plan payouts suggests that even if certain employees do not achieve individual goals, others have, and, overall, payments are made at increasing levels from year to year. A failure of certain employees to meet their individual goals should not rise to a concern about recurrence of the expense, any more than it would about any other component of the revenue requirement. During the period between rate cases, an employee could quit and not be rehired, be replaced by a worker who was paid less, or could receive a smaller pay increase than the average base pay award. These fluctuations in individual employee costs have traditionally not been reasons to reject base pay costs and should not be a reason for rejection of incentive compensation expense.

Finally, the Proposed Order is inconsistent with the Conclusion of the Commission in Docket No. 01-044 in that it does not recognize the benefits to ratepayers from incentive compensation programs in general.

MidAmerican proposes to replace Proposed Analysis and Conclusion V.B.1, pp. 9-10 of the Administrative Law Judge's Proposed Order with the following:

> MEC has had a compensation plan in place for 6 years that pays employees labor market average wages consisting of base pay plus incentive payments. It is legitimate for utilities to pay labor market average wages in order to attract and retain employees, and there is no evidence in this case that MidAmerican's wages are excessive for its labor markets. The Commission has recognized in MEC's RDST Docket No. 01-0444 that labor market average wages, paid in the form of base plus incentive pay, are legitimate ratepayer expenses.
>
> In Docket No. 01-0444, with regard to MEC's incentive compensation plan, the Commission recognized that incentive compensation plans, in general, can have the potential to provide benefits in terms of improving employee performance and reducing costs, and the recovery of these expenses associated with incentive compensation plans may be appropriate in some circumstances. We there directed MEC to provide tangible evidence of ratepayer benefits. The Commission concludes that MidAmerican has provided such evidence in the form of the testimony of its Vice President Human Resources, who has watched MEC's incentive compensation efforts over its 6-year history produce increased efficiency in operations and enhanced employee performance.
>
> Incentive compensation payments, like any other expense, must be recurring in nature to be eligible for recovery. MidAmerican's 6-year history of ICP is not challenged. While it must be recognized that there is a possibility that MidAmerican might terminate the plan, that poor corporate performance could reduce or eliminate incentive payouts or that individual employees might not receive payouts, we do not disallow other employee benefit expenses because of these potential fluctuations and we will not do so here.

IV. CORDOVA ENERGY CENTER (VI.C.3. OF PROPOSED ORDER)

MidAmerican is concerned that the Proposed Order is inconsistent in its treatment of issues concerning the reasonable conclusions that may be drawn concerning future behavior by reference to past behavior. As noted in the Proposed Order on pages 4 and 7, MidAmerican has had an incentive compensation plan in place for six years and has stated its commitment to incentive compensation on the record. However, the Proposed Order determines that it continues to be concerned that MidAmerican may choose not to pay the incentive compensation portion of wages.

However, in reference to the Cordova Energy Center, the future actions of a non-party can, apparently, be reasonably determined from a much shorter history. Because this is a pro forma adjustment, the history of the customer paying both charges does not even go back to the start of the test year for this proceeding. Yet that history apparently provides sufficient certainty to include the second customer charge in revenues for the purposes of this case.

If it is reasonable to conclude that MidAmerican will continue to receive the second customer charge from Cordova Energy Center, it is even more reasonable to conclude that MidAmerican's commitment to incentive compensation will continue. MidAmerican would have no objection to foregoing its arguments concerning the Cordova Energy Center revenues in return for the Commission's recognition that it no longer has a reasoned basis to be concerned that once incentive compensation costs are recognized in a rate proceeding, MidAmerican will discontinue those payments to its employees.

V. FLOTATION COSTS (VII.D. OF PROPOSED ORDER)

MidAmerican requests the following change to the last sentence in the Commission conclusion in order to more accurately reflect MidAmerican's position as set forth in MEC Ex. 12.0 at 2:

> Giving consideration to the approved flotation cost adjustment, the Commission finds that MidAmerican's allowed return on common equity is 11.22%, which MidAmerican does not oppose for purposes of this proceeding.

VI. ALLOCATION OF MARKETING COSTS—MARGIN VERSUS THROUGHPUT (VIII.C. OF PROPOSED ORDER)

MidAmerican continues to believe that cost causation should be the lodestar for cost of service studies. The evidence in the record, the sworn testimony of MidAmerican witness Rea, is that these marketing costs are incurred to attract margin. (MEC Ex. 19 at 4). Therefore, margin is the most appropriate functional allocator of marketing costs among the customer classes. MidAmerican does not dispute that the *result* in this cost of service study of using margin as the allocator is that Rate 70 customers would pay more per therm (although likely not per bill) than would Rates 85 and 87 customers for this component of the revenue requirement. The logic underpinning Staff witness Luth's choice of throughput as an allocator is that it is "more appropriate for the customers who pay the least per therm to pay as least as much for marketing costs *designed to expand the use of the utility service* as customers who pay more per therm." (Staff Ex. 9.0 at 10) (emphasis added). That logic is flawed for two reasons. When, for the most part, costs are allocated according to a cost of service study that assigns costs on the basis of cost causation, the reason certain customers pay the least per therm is that, on a per therm basis, that *is* the sum of their responsibility vis-à-vis the other customers on the system. Therefore, even if one were inclined to change the means to get what appears to be a better result, as Staff espouses here, by reviewing the reason why the large customers pay less per therm, it is apparent that doing so will not necessarily create a more fair result. Secondly, marketing efforts are directed to a subset of all customers who may contribute to expanding the use of the utility service: those that will produce the greatest margin increase. Therefore, margin remains the more sound allocator of marketing costs for a properly designed cost of service study. It would be reasonable for Rate 70, 85, and 87 customers to pay the same amount per therm for marketing activities only if those marketing activities were expected to lower rates by the same amount per therm for each of those classes. This is likely not the case. More likely, the case is that Rate 70 customers will likely benefit more on a ¢/therm basis because their ¢/therm charge is currently the highest. Because of this it is appropriate to allocate marketing costs on the basis of margin. Customers that pay the most per therm on a margin basis should pay the most per therm for efforts to reduce margin rates.

MidAmerican recommends replacing the last paragraph in the Commission Analysis and Conclusion with the following:

> In order to derive a reasonably accurate result as to the cost of serving each customer group, it is necessary to choose elements that reasonably relate to their purpose. The choice should be based on cost causation. Therefore, the Commission agrees with MidAmerican that margin best reflects the customer benefits from gas distribution marketing costs and should be used to develop this weighting factor.

VII. RATE 60 CUSTOMER CHARGE (IX.A.1. OF PROPOSED ORDER)

The Proposed Order properly rejects CUB's proposed Rate 60 customer charge of $9. For the reasons cited in MidAmerican's initial and reply briefs in this proceeding, the Order should adopt MidAmerican's proposed Rate 60 customer charge calculation (that is, the cost-of-service level approved by the Commission, rounded to the nearest dime, not to exceed $12.00). The Commission's conclusion should be altered as follows:

> The effect of CUB's proposal is that A&G costs are excluded from customer costs, making A&G costs entirely distribution-related. The Commission does not agree with this result. We find that charging administrative and general costs to a particular function or service on the same basis as the direct costs for that service, provides a better matching of total costs incurred for each given function.
>
> Staff acknowledges that its proposed customer charge increase of $1.50 is lower than that justified by its cost-of-service study. In fact, the proposal is only about 67% of the increase that would be justified by using the results of Staff's cost-of-service study (a $11.23 customer charge) in MidAmerican's last gas rate

> case, Docket No. 99-0534. MidAmerican's proposal not-to-exceed $12.00 in the current docket, therefore, does not greatly exceed Staff's results based on a 1998 test year. The Commission concludes that MidAmerican's proposal of a customer charge for Rate 60 set at the cost-of-service level approved by the Commission and not to exceed $12.00, with the energy charge to recover the remainder of the class revenue requirement is the most reasonable and should be approved.

If the Order nonetheless adopts Staff's position over MidAmerican's objection, the Order requires clarification. The Proposed Order states that "Staff proposes a $10.50 customer charge for Rate 60." (Proposed Order at 35.) It is MidAmerican's understanding that Staff does not actually propose a customer charge <u>per se</u>; rather, Staff proposes a method for calculating a customer charge. As MidAmerican understands Staff's proposal, Staff would set the Rate 60 customer charge by determining the appropriate Rate 60 overall revenue requirement; subtracting from this overall revenue requirement the revenue which would be recovered at the existing Rate 60 energy charge; determining the new customer charge required to recover the remainder of the new overall Rate 60 revenue requirement; and rounding this customer charge to the nearest dime. This method happens to result in a Rate 60 customer charge of $10.50 based on Staff's proposed revenue requirement and cost of service analysis, but it may result in a different customer charge depending on the overall revenue requirement and cost of service calculation ultimately approved by the Commission. If the Commission rejects MidAmerican's proposed calculation of the Rate 60 customer charge, the following modifications should be made to the discussion of Staff's position in Section IX.A.1:

> Staff proposes a <u>calculation which, based upon Staff's revenue requirement and cost of service analysis, results in a</u> $10.50 customer charge for Rate 60, which is less than the cost-of-service level suggested by Staff's cost of service study as well as the Company's proposed rate. Staff's proposed customer charge is less than the charge suggested by the cost-of-service study because Staff recommends that the volumetric distribution-energy charge per therm remain at or near the current rate, which exceeds the cost-of-service. To recover revenues near the total Rate 60 cost of service, Staff's customer charge is necessarily lower than the cost-of-service-study level. ~~The $1.50 increase from $9.00 represents a 16.7~~

> ~~percent increase, but Staff does not view $1.50 per month as particularly burdensome.~~ Staff does not view as particularly burdensome the resulting increase in the Rate 60 customer charge. Staff considers its proposed increase to be reasonable because it provides stability and continuity in the Rate 60 distribution-energy charge.
>
> Staff opposes CUB's proposal to remove administrative and general ("A&G") costs from the customer charge. Staff contends that this results in A&G costs being entirely distribution-related, a result Staff disputes. Staff asserts that its proposed customer charge mitigates CUB's concern that MEC's proposed customer charge is over-burdensome to low income customers.

The "Commission Analysis and Conclusion" discussion should be modified as follows:

> The effect of CUB's proposal is that A&G costs are excluded from customer costs, making A&G costs entirely distribution-related. The Commission does not agree with this result. We find that charging administrative and general costs to a particular function or service on the same basis as the direct costs for that service, provides a better matching of total costs incurred for each given function.
>
> The Commission concurs with Staff and CUB's assertion that MEC's proposed customer charge disproportionately burdens low-use customers. The Commission finds that setting the Rate 60 customer charge using the methodology ~~at the level~~ suggested by Staff~~, $10.50 per month,~~ mitigates CUB's concern while still making reasonable movement toward the cost of service.

VIII. RATE 70 DISTRIBUTION CHARGE (IX.B.2. OF PROPOSED ORDER)

The Proposed Order adopts Staff's proposed differential between sales service and transportation service distribution charges. For the reasons set forth in MidAmerican's initial and reply briefs, no such differential should be imposed at this time. The Commission's conclusion should be altered as follows:

> The Commission agrees that there is likely some difference in costs incurred between sales and transportation customers because transportation customers arrange for their own gas supplies. However, the Commission is concerned about the size of the rate increase to sales customers if this differential were adopted at this time and does not believe the basis for a differential has been carefully documented as yet. Therefore, no differential will be applied in this case.

IX. RATE 85 CUSTOMER CHARGE AND DISTRIBUTION ENERGY CHARGE (IX.C. OF PROPOSED ORDER)

The Proposed Order states that "Staff's revenue requirement and cost of service study shall be used for the reasons previously discussed." This statement conflicts with prior language in the Proposed Order, which properly finds that Staff's cost of service study should not be used. The Order's language should be modified as follows:

> Staff and MEC agree that the Rate 85 customer charge should be capped at the lower of cost of service or $1,200 per month. The Commission concurs. The cost of service level for the Rate 85 customer charge should be calculated using the cost of service principles previously discussed. Any resulting change in the customer charge should be capped at $1200. ~~finds that Staff's revenue requirement and cost of service study shall be used for the reasons previously discussed, resulting in a $1,200 Rate 85 customer charge~~.

As discussed in MidAmerican's comments on Section IX.B.2 (Rate 70 Distribution Energy Charge), for the reasons set forth in MidAmerican's initial and reply briefs, no differential between sales and transportation rates should be imposed at this time.

Additionally, MidAmerican notes that the Proposed Order does not discuss the Rate 85 demand charge. MidAmerican understands that the Company and Staff agree on how the demand charge should be calculated. MidAmerican's proposed language addresses how the Rate 85 demand charge should be determined.

The Commission's conclusion should be altered as follows:

> The discussion of the differential in the Distribution Energy Charge paid by transportation and sales customers was previously discussed with regard to Rate 70. The discussion of this differential also applies to the Rate 85 Distribution Energy Charge. Accordingly, Staff's proposed Distribution Energy Charge differential for Rate 85 sales and transportation customers is not approved at this time, for the reasons previously discussed. No differential will be applied in this case.
>
> MidAmerican and Staff generally agree upon the method for calculating the Rate 85 Distribution Energy Charge – dividing distribution ~~-~~energy costs plus any unrecovered customer costs by Rate 85 throughput measured in therms.

Differences in the Staff and MidAmerican cost-of-service studies result in differences in the proposed DEC rates [MidAmerican Exhibit 20.0, page 6]. The Commission approves this calculation of the Rate 85 Distribution Energy Charge.

MidAmerican and Staff also agree upon the method for calculating the Rate 85 distribution demand charge – dividing peak-demand costs by Rate 85 demand-billing units measured in maximum-daily-requirement therms. Differences in the Staff and MidAmerican cost-of-service studies result in differences in the proposed rates [MidAmerican Exhibit 20.0, page 6]. The Commission approves this calculation of the Rate 85 Distribution Demand Charge.

X. RATE 87 (IX.D. OF PROPOSED ORDER)

As discussed in MidAmerican's comments on Section IX.B.2 (Rate 70 Distribution Energy Charge), for the reasons set forth in MidAmerican's initial and reply briefs, no differential between sales and transportation rates should be imposed at this time. The Commission's conclusion should be altered as follows:

> Staff and MEC agree, and the Commission concurs, that the Rate 87 customer charge and DEC should be set at cost of service. Staff's recommended DEC differential between transportation and sales customers was previously rejected ~~approved~~ for Rates 70 and 85. The Commission finds that Staff's proposed DEC for Rate 87 sales and transportation customers is not approved, for the reasons previously discussed. Staff and MEC agree, as does the Commission, that the Rate 87 transportation-administrative charge and transportation-metering charge should be $85.00 and $18.00 per month, respectively.

XI. RIDER 9—FIRM STAND-BY SERVICE ADDER (IX.E.2. OF PROPOSED ORDER)

The Proposed Order properly recognizes that basing the price of firm standby service on a daily spot market index is a separate issue from applying a 10% adder to that index. Likewise, the Proposed Order properly concludes that a daily spot market index is an appropriate basis for the cost of standby service.

MidAmerican continues to believe that a 10% adder should be applied to the daily spot market index to set the price for gas used under firm standby service. While MidAmerican acknowledges that its actual cost to provide firm standby service may differ from this level, the use of an adder would help assure that sales service customers do not subsidize transportation service. The Commission should adopt the adder if it wishes to minimize these potential subsidies. In any event, the Commission should base the price of standby service on a spot market index rather than on MidAmerican's WACOG or PGA.

For the reasons set forth in MidAmerican's initial and reply briefs, MidAmerican recommends that a 10% adder be applied in determining the price for firm standby service. The Commission's conclusion should be altered as follows:

> The Commission concludes that while it is difficult to foresee whether the index price would match the actual costs incurred to secure supply for the standby customer, it is evident that those costs can exceed the index price. In that scenario, sales service customers will ultimately pay those portions of the costs that the standby transportation customer did not pay, absent a 10% adder. There is no reason that sales service customers who have not chosen to expose themselves to the risks of the market should subsidize transportation customers. Therefore, the Commission concludes the 10% adder is a prudent addition.

XII. RIDER 8—NON-CRITICAL-DAY BALANCING OF CUSTOMER-OWNED VOLUMES (IX.F.2. OF PROPOSED ORDER)

MidAmerican is disappointed with the Proposed Order's acceptance of Staff's proposed treatment of imbalances in the opposite direction to system imbalances. The Proposed Order ignores the substantial record developed in this proceeding that shows that imbalances in the opposite direction of the system net imbalance *do* impose costs on MidAmerican's PGA customers. The Proposed Order further establishes a questionable burden of proof for Staff's proposed changes to terms and conditions--conditions the Commission had previously found to be just and reasonable and that are currently found in MidAmerican's tariff.

The Proposed Order cites Staff's contention that "such imbalances *may* be beneficial to MEC." (Proposed Order at 47; emphasis added.) MidAmerican emphasizes once again that there cannot be an effect that benefits MidAmerican, as the recipients of any such benefits or detriments would be the sales service customers because the costs of benefits or detriments flow directly through the PGA. Staff's conjecture about what may happen is hardly sufficient reason to overthrow the Commission's approved terms and conditions. In contrast to Staff's identification of an undocumented potential effect, the evidentiary record is replete with examples of what <u>does</u> happen in real life. The effect of the Proposed Order is to ignore these real-life examples in favor of Staff's suppositions.

As stated in the Proposed Order, Staff indeed "contends that MEC's current policy…is unreasonable." (Proposed Order at 47.) But Staff's mere statement that something is unreasonable hardly makes it so. No evidence for Staff's position is cited. And this is proper, for scant evidence for Staff's position exists on the record. We are left with two positions: the Commission's prior position that MidAmerican's existing tariff is reasonable, and Staff's unsupported contention that the tariff as approved by the Commission is unreasonable. Clearly, the evidence in the record can only support a continuation of the current tariff.

The Proposed Order repeats a statement found in Staff's Initial Brief, pp. 45-46, to the effect that "Staff recommends that when daily imbalances do not impose a cost upon MEC, such as imbalances in the opposite direction of the total system imbalance, customers should not be assessed a penalty charge." (Proposed Order at 47.) However, MidAmerican understands that Staff instead is requesting that the Commission order that no penalties should be imposed on imbalances in the opposite direction of the total system imbalance, *regardless of whether these imbalances impose a cost on PGA sales service customers.* (Staff Ex. 6 at 10) Staff does make a sweeping assumption that imbalances in the opposite direction of the system imbalance impose no cost on MEC, an assumption that remains largely unshaken in the face of numerous counter examples. Staff comes close to acknowledging its error when it states the impossibility of associating higher PGA costs "with any specific imbalance on any specific day." (Staff Exhibit 10.0 at 11.) Staff then incredulously finds that "this has no merit." Staff witness Borden essentially argues that no penalty charge should be imposed on transportation customers when an imbalance is in the opposite direction of the total system imbalance because he believes that, at least sometimes, such imbalances might not impose a cost on sales service customers. MidAmerican would expect a stronger evidentiary basis in order to allow transportation customers to escape the consequences of their own actions, especially when such can work to the detriment of sales service customers. The effect of the Commission's prior order was to prevent any subsidization of transportation customers by sales service customers when the transportation customers caused imbalances; that is an eminently reasonable result and the Commission-approved tariff should be retained.

The Proposed Order likewise cites Staff's suggestion that "MEC should then make a further change: offering separate balancing tariffs specific to the interstate pipeline serving the area." Staff's suggestion fails to address the vast majority of MidAmerican's arguments, dealing only with MidAmerican's need to balance its nominations on each pipeline, not just on the system as a whole.

Staff's suggestion has a further ironic twist: in offering its alternative, Staff suggests that MidAmerican offer "daily imbalance tariffs that replicated the service provided by each interstate pipeline." (Staff Exhibit 10.0 at 11.) Yet Staff has acknowledged (subject to check) that NGPL, MidAmerican's primary Illinois source, does *not* forgive imbalances in the opposite direction as its net imbalance. (Tr. at 127-128.) Staff cannot have it both ways; Staff cannot suggest that MidAmerican replicate the balancing provisions of interstate pipelines, yet reject the fundamental component of those pipeline balancing provisions which is at issue here.

For the reasons set forth in MidAmerican's initial and reply briefs, the Commission should not reject its previous approval of the balancing penalties in MidAmerican's existing tariffs.

The Proposed Order's Conclusion should be altered as follows:

> Staff has proposed to change both MidAmerican's proposed and current Commission-approved tariff. Although Staff concludes its Reply Brief with the argument that MidAmerican has not shown that the Staff proposal will increase detrimental behavior by its customers, the Commission finds that a very weak basis on which to order this change to a currently-effective tariff. As it is a Staff proposal, one would expect Staff to offer evidence that its change would not only reduce costs to transportation customers, but would not impose costs on sales service customers by increasing charges to be flowed through the PGA. In contrast, MidAmerican has shown that these imbalances can increase PGA costs. The Commission concludes that the best way to encourage transportation customers to remain in balance is to impose imbalance charges regardless of the direction of the imbalance.

WHEREFORE, MidAmerican Energy Company respectfully requests the Proposed Order be revised in accordance with the arguments and revisions discussed herein.

Respectfully submitted,

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